A Constitution for the Few

To understand the U.S. political system, it would help to investigate its origins and fundamental structure, beginning with the Constitution. The men who gathered in Philadelphia in 1787 strove to erect a strong central government. They agreed with Adam Smith that government was "instituted for the defense of the rich against the poor" and "grows up with the acquisition of valuable property."[1]

CLASS POWER IN EARLY AMERICA

Early American society has been described as egalitarian, free from the extremes of want and wealth that characterized Europe. In fact, from colonial times onward, men of influence received vast land grants from the crown and presided over estates that bespoke an impressive munificence. By 1700, three-fourths of the acreage in New York belonged to fewer than a dozen persons. In the interior of Virginia, seven individuals owned over 1.7 million acres. By 1760, fewer than five hundred men in five colonial cities controlled most of the commerce, shipping, banking, mining, and manufacturing on the eastern seaboard. In the period from the American Revolution to the Constitutional Convention (1776–1787), the big landowners, merchants, and bankers exercised a strong influence over politico-economic life, often dominating the local newspapers that served the interests of commerce.[2]

In twelve of the thirteen states (Pennsylvania excepted), only property-owning White males could vote, probably not more than 10 percent of the total adult population. Excluded were all Native Americans ("Indians"), persons of African descent, women, indentured servants, and White males lacking sufficient property. Property qualifications for holding office were so steep as to exclude even most of the White males who could vote. A member of the

New Jersey legislature had to be worth at least £1,000. South Carolina state senators had to possess estates worth at least £7,000 clear of debt (equivalent to over a million dollars today). In Maryland, a candidate for governor had to own property worth at least £5,000. In addition, the absence of a secret ballot and of a real choice among candidates and programs led to widespread discouragement.[3]

Not long before the Constitutional Convention, the French chargé d'affaires wrote to his government:

> Although there are no nobles in America, there is a class of men denominated "gentlemen."... Almost all of them dread the efforts of the people to despoil them of their possessions, and, moreover, they are creditors, and therefore interested in strengthening the government and watching over the execution of the law.... The majority of them being merchants, it is for their interest to establish the credit of the United States in Europe on a solid foundation by the exact payment of debts, and to grant to Congress powers extensive enough to compel the people to contribute for this purpose.[4]

In 1787, just such wealthy and powerful "gentlemen," our "Founding Fathers," congregated in Philadelphia for the professed purpose of revising the Articles of Confederation and strengthening the central government.[5] Under the Articles, "the United States in Congress" wielded a broad range of exclusive powers over treaties, trade, appropriations, currency, disputes among the various states, war, and national defense. But these actions required the assent of at least nine states.[6] The Congress also had no power to tax, which left it dependent upon levies agreed to by the states. It was unable to compel the people—through taxation—to contribute to the full payment of the public debt, most of which was owed to wealthy private creditors.

The delegates to Philadelphia wanted a stronger central power that would (a) resolve problems among the thirteen states regarding trade and duties, (b) protect overseas commercial and diplomatic interests, (c) effectively propagate the financial and commercial interests of the affluent class, and (d) defend the very wealthy from the competing claims of other classes within the society. It is (c) and (d) that are usually ignored or denied by too many textbook writers.

Most troublesome to the framers of the Constitution was the insurgent spirit evidenced among the people. In 1787, a worried George Washington wrote to a former comrade-in-arms that a constitution was much needed "to contain the threat of the people rather than to embrace their participation and their competence," lest "the anarchy of the propertyless would give way to despotism."[7] Even plutocrats like Gouverneur Morris, who shortly before the Constitutional Convention had opposed strong federation, now realized that an empowered national government would be the best safeguard for propertied interests. So Morris "gave up 'state rights' for 'nationalism' without hesitation."[8]

The working people of that day have been portrayed as parochial spendthrifts who never paid their debts and who advocated inflated paper money. Most historians say little about the plight of the common folk in early America. Most of the White population consisted of poor freeholders, artisans,

tenants, and indentured servants, the latter entrapped in payless servitude for years. A study of Delaware farms at about the time of the Constitutional Convention found that the typical farm family might have a large plot of land but little else, surviving in a one-room house or log cabin, without barns, sheds, draft animals, or machinery. The farmer and his family pulled the plow.[9]

In the United States of 1787, there existed poorhouses and a large debtor class. Small farmers were burdened by heavy rents, ruinous taxes, and low incomes. To survive, they frequently had to borrow money at high interest rates. To meet their debts, they mortgaged their future crops and went still deeper into debt. Interest rates on debts ranged from 25 to 40 percent, and taxes fell most heavily on those of modest means. No property was exempt from seizure, save the clothes on a debtor's back.[10]

Throughout this period, newspapers complained of the increasing numbers of young beggars in the streets. Economic prisoners crowded the jails, incarcerated for debts or nonpayment of taxes.[11] Among the people, there grew the feeling that the revolution against the British crown had been fought for naught. Angry armed crowds in several states began blocking foreclosures and forcibly freeing debtors from jail. In the winter of 1787, impoverished farmers in western Massachusetts led by Daniel Shays took up arms. Their rebellion was forcibly put down by the state militia after several skirmishes that left eleven men dead and scores wounded.[12]

CONTAINING THE SPREAD OF DEMOCRACY

The specter of Shays's Rebellion hovered over the delegates who gathered in Philadelphia three months later, confirming their worst fears. They were determined that persons of birth and fortune should control the affairs of the nation and check the "leveling impulses" of the propertyless multitude who composed "the majority faction" (majority class). "To secure the public good and private rights against the danger of such a faction," wrote James Madison in *Federalist* No. 10, "and at the same time preserve the spirit and form of popular government is then the great object to which our inquiries are directed." Here Madison touched the heart of the matter: how to keep the "form" and appearance of popular government with only a minimum of the substance, how to construct a government that would win some popular support but would not tamper with the existing class structure, a government strong enough to service the growing needs of the entrepreneurial and landed classes while withstanding the egalitarian demands of the ordinary populace.

The framers of the Constitution could agree with Madison when he wrote (also in *Federalist* No. 10) that "the most common and durable source of faction has been the various and unequal distribution of property [that is, wealth]. Those who hold and those who are without property have ever formed distinct interests in society" and "the first object of government" is "the protection of different and unequal faculties of acquiring property." So government is there to see that those who have a talent for getting rich are not hampered in any way by those who might be made poor in the process.

"Religious freedom is my immediate goal, but my long-range plan is to go into real estate."

The framers were of the opinion that *democracy* (rule by the common people) was "the worst of all political evils," as Elbridge Gerry put it. For Edmund Randolph, the country's problems were caused by "the turbulence and follies of democracy." Roger Sherman concurred: "The people should have as little to do as may be about the Government." According to Alexander Hamilton, "all communities divide themselves into the few and the many. The first are the rich and the wellborn, the other the mass of the people.... The people are turbulent and changing; they seldom judge or determine right." He recommended a strong centralized state power to "check the imprudence of democracy." And George Washington, the presiding officer at the Philadelphia Convention, urged the delegates not to produce a document merely to "please the people."[13]

There was not much danger of that. The delegates spent many weeks debating and defending their interests, but these were the differences of merchants, slaveholders, and manufacturers, a debate of haves versus haves in which each group sought safeguards in the new Constitution for its particular concerns. Added to this were disagreements about constitutional structure.

How might the legislature be organized? How much representation should the large and small states have? How should the executive be selected?

The founders decided on a bicameral legislation, consisting of a House of Representatives elected every two years in its entirety and a Senate with six-year staggered terms. It was decided that seats in the House would be allocated among the states according to population, while each state, regardless of population, would have two seats in the Senate.

Major questions relating to the new government's ability to protect the interests of property were agreed upon with surprisingly little debate. On these issues, there were no poor farmers, artisans, indentured servants, or slaves attending the convention to proffer an opposing viewpoint. Ordinary working people could not take off four months to go to Philadelphia and write a constitution. The debate between haves and have-nots never took place.

Not surprisingly, Article I, Section 8, that crucial portion of the Constitution that enables the federal government to serve the interests of investment property, was adopted within a few days with little debate. Congress was given the power to regulate commerce among the states and with foreign nations and Indian tribes, lay and collect taxes and excises, impose duties and tariffs on imports but not on commercial exports, "Pay the Debts and provide for the common Defence and general Welfare of the United States," establish a national currency and regulate its value, borrow money, fix the standard of weights and measures necessary for commerce, protect the value of securities and currency against counterfeiting, and establish uniform bankruptcy laws throughout the country—all measures of primary concern to investors, merchants, and creditors.

Some of the delegates were land speculators who invested in western holdings. Accordingly, Congress was given the power to regulate and protect all western territorial property. Most of the delegates speculated in government securities, inflated paper scrip that the earlier Confederation had issued to pay soldiers and small suppliers. Wealthy speculators bought from impoverished holders huge amounts of these nearly worthless securities for a trifling. Under Article VI, all debts incurred by the Confederation were valid against the new government, a provision that allowed the speculators to reap enormous profits by cashing in the inflated scrip at face value.[14]

By assuming this debt, the federal government—under the policies of the first secretary of the treasury, Alexander Hamilton—used the public treasury to create by government fiat a vast amount of private capital and credit for big investors, to be funded by the government's newly established ability to lay taxes. The payment of the debt came out of the pockets of the general public and went into the pockets of moneyed individuals who were creditors to the government by virtue of their possessing the inflated scrip. This federally assumed debt consumed nearly 80 percent of the annual federal revenue during the 1790s.[15] This process of using the taxing power to gather money from the working populace in order to bolster private fortunes continues to this day, as we shall see in the chapters ahead.

In the interest of merchants and creditors, the states were prohibited from issuing paper money or imposing duties on imports and exports or interfering

with the payment of debts by passing any "Law impairing the Obligation of Contracts." The Constitution guaranteed "Full Faith and Credit" in each state "to the Acts, Records, and judicial Proceedings" of other states, thus allowing creditors to pursue their debtors across state lines.

Slavery—considered a major form of property—was afforded special accommodation in the Constitution. Three-fifths of the slave population in each state were to be counted when calculating the state's representation in the lower house. This gave the slave states a third more representation in Congress than was otherwise merited. This disproportionate distribution of seats helped the slave interests to pass laws that extended slavery into new territories and discouraged Congress from moving toward abolition.

The Constitution never abolished the slave trade. Indeed, the importation of slaves was explicitly guaranteed for another twenty years until 1808, after which there would be the option—but no requirement—that it be abolished. Many slaveholders assumed they would have enough political clout to keep the trade going beyond that year. Slaves who escaped from one state to another had to be delivered up to the original owner upon claim, a provision (Article IV, Section 2) that was unanimously adopted at the Convention.[16]

The framers believed the states were not sufficiently forceful in suppressing popular uprisings like Shays's Rebellion, so the federal government was empowered to protect the states "against domestic Violence," and Congress was given the task of organizing the militia and calling it forth to "suppress Insurrections." Provision was made for erecting forts, arsenals, and armories, and for the maintenance of an army and navy for both national defense and to establish an armed federal presence within potentially insurrectionary states. This measure was to prove a godsend to the industrial barons a century later when the U.S. Army was used repeatedly to break mass strikes by miners and railroad and factory workers.

FRAGMENTING MAJORITY POWER

In keeping with their desire to contain the propertyless majority, the founders inserted what Madison called "auxiliary precautions" designed to fragment power without democratizing it. They separated the executive, legislative, and judicial functions and then provided a system of checks and balances between the three branches, including staggered elections, executive veto, the possibility of overturning the veto with a two-thirds majority in both houses, Senate confirmation of appointments and ratification of treaties, and a bicameral legislature. They contrived an elaborate and difficult process for amending the Constitution, requiring proposal by two-thirds of both the Senate and the House and ratification by three-fourths of the state legislatures.[17] To the extent that it existed at all, the majoritarian principle was tightly locked into a system of minority vetoes, making swift and sweeping popular action less likely.

The propertyless majority, as Madison pointed out in *Federalist* No. 10, must not be allowed to concert in common cause against the propertied class and its established social order. The larger the nation, the greater the "variety

of parties and interests" and the more difficult it would be for a mass majority to act in unison. As Madison argued, "A rage for paper money, for an abolition of debts, for an equal division of property, or for any other wicked project will be less apt to pervade the whole body of the Union than a particular member of it." An uprising of impoverished farmers might threaten Massachusetts at one time and Rhode Island at another, but a national government would be large enough to contain each of these and insulate the rest of the nation from the contamination of rebellion.

Not only should the low-income majority be prevented from coalescing, its upward thrust upon government also should be blunted with indirect forms of representation.

- The senators from each state were to be elected by their respective state legislatures rather than directly by the voters.
- Direct popular election of the Senate was achieved in 1913 when the Seventeenth Amendment was adopted—126 years after the Philadelphia Convention—demonstrating that the Constitution is sometimes modifiable in a democratic direction, though it does seem to take a bit of time.
- Senatorial elections were to be staggered, with only a third of the Senate facing election every two years, thereby minimizing a sweeping change.
- The president was to be selected by an electoral college whose members, by 1800, were elected by the people in only five states, and by state legislatures or county sheriffs in the other eleven states.
- As anticipated by the framers, the Electoral College would act as a damper on popular sentiment. Composed of political leaders and "men of substance," elected in each state by the voters, the Electoral College would convene months after the election in their various states and choose a president of their own liking. It was believed they usually would be unable to muster a majority for any one candidate, and that the final selection would be left to the House, with each state delegation therein having only one vote.
- The Supreme Court was to be elected by no one, its justices being appointed to life tenure by the president, with confirmation by the Senate.

The only portion of government to be directly elected by the people was the House of Representatives. Many of the delegates were against this arrangement. They were concerned that with direct elections demagogues would ride into office on a populist tide only to pillage the treasury and wreak havoc on the wealthy class. John Mercer observed that he found nothing in the proposed Constitution more objectionable than "the mode of election by the people." And Gouverneur Morris warned, "The time is not distant, when this Country will abound with mechanics [artisans] and manufacturers [factory and mill workers] who will receive their bread from their employers. Will such men be the secure and faithful Guardians of liberty? ... The ignorant and dependent [that is, poor and unschooled] can be ... little trusted with the public interest."[18]

When the delegates finally agreed to having "the people" elect the lower house, as noted earlier, they were referring to a select portion of the

population that excluded almost all White males without property, all Native Americans, all indentured servants, and all females of whatever race. Also excluded were slaves, who constituted almost one-fourth of the nation's population. Even among those African Americans who had gained their freedom in both North and South, few were allowed to vote.

PLOTTERS OR PATRIOTS?

In a groundbreaking book published in 1913, historian Charles Beard famously argued that the framers were guided by the interests of their affluent class. Disputing Beard are those who say that the framers were concerned with higher things than just lining their purses. True, they were moneyed men who profited directly from policies initiated under the new Constitution, but they were motivated by a concern for nation building that went beyond their particular class interests.

That is exactly the point: high-mindedness is a common attribute among people even when, or especially when, they are pursuing their personal and class interests. The fallacy is to presume that there is a dichotomy between the desire to build a strong nation and the desire to protect wealth and that the framers could not have been motivated by both. In fact, like most other people, they believed that what was good for themselves was ultimately good for their country. Their nation-building values and class interests went hand in hand, and to discover the existence of the "higher" sentiment does not eliminate the self-interested one.

Indeed, the problem is that most people too easily and self-servingly believe in their own virtue. The founders were no exception. They never doubted the nobility of their effort and its importance for the generations to come. Just as many of them could feel dedicated to the principle of "liberty for all" while owning slaves, so could they serve both their nation and their estates. The point is not that they were devoid of the grander sentiments of nation building, but that there was nothing in their concept of nation that worked against their class interest and a great deal that worked for it.

The framers may not have been solely concerned with getting their own hands in the till, although enough of them did, but they were explicitly concerned with defending the interests of the wealthy few from the laboring many. "The Constitution," as Staughton Lynd noted, "was the settlement of a revolution. What was at stake for Hamilton, Livingston, and their opponents was more than speculative windfalls in securities; it was the question, what kind of society would emerge from the revolution when the dust had settled, and on which class the political center of gravity would come to rest."[19]

The small farmers and debtors, who opposed a central government that would be even further from their reach than the local and state governments, have been described as motivated by self-serving, parochial interests, unlike the supposedly high-minded statesmen who journeyed to Philadelphia.[20] How and why the wealthy became visionary nation builders is never explained. Not too long before, many of them had been proponents of laissez-faire and had

opposed a strong central government. In truth, it was not their minds that were so much broader but their economic interests. Their motives were no higher than those of any other social group struggling for place and power in the United States of 1787. But possessing more time, money, information, and organization, they enjoyed superior results.

Though supposedly dedicated to selfless and upright goals, the delegates nevertheless bound themselves to the strictest secrecy. Proceedings were conducted behind locked doors and shuttered windows (despite the sweltering Philadelphia summer). Madison's notes, which recorded most of the actual deliberations, were published, at his insistence, only after all participants were dead, fifty-three years later, most likely to avoid political embarrassment to them.[21]

The founders were motivated by high-minded objectives, some people say, but they repeatedly stated their intention to erect a government strong enough to protect the haves from the have-nots (which for them was one of their high-minded objectives). Deliberating behind closed doors, these wealthy men gave voice to the crassest class prejudices and most disparaging opinions about popular involvement. Their concern was to diminish popular control and resist all tendencies toward class equalization (or "leveling," as it was called). Their dedication to their propertied class interests were so unabashedly avowed as to cause one delegate, James Wilson of Pennsylvania, to complain of hearing too much about how the primary object of government was property. The cultivation and improvement of the human mind, he maintained, was the most noble objective of the polity—a fine sentiment that evoked no opposition from his colleagues as they continued about their business.

The framers supposedly had a "realistic" opinion of the rapacious nature of human beings—readily evidenced when they talked about the common people—yet they held a rather sanguine view of the self-interested impulses of their own class, which they saw as inhabited largely by virtuous men of "principle and property." As the "minority faction" these gentlemen would not sacrifice the rights of other citizens, especially the right to pursue property and wealth, a pursuit that they believed constituted the essence of liberty.[22]

In sum, the Constitution was consciously designed as a conservative document, elaborately equipped with a system of minority locks and dams in order to resist popular tides. The Constitution furnished special provisions for the slaveholding class and for a rising bourgeoisie. For the founders, liberty meant something different from democracy. It meant liberty to invest, speculate, trade, and accumulate wealth without encroachment by the common populace.

The democratic civil liberties designed to give all individuals the right to engage in public affairs won little support from the delegates. When George Mason of Virginia recommended that a committee be formed to draft "a Bill of Rights," a task that could be accomplished "in a few hours," the other convention members offered little discussion on the motion and voted almost unanimously against it.

If the Constitution was such an elitist document, how did it manage to win ratification? It was strongly opposed in most of the states. Virginia's Patrick

Henry charged that the Constitution enabled "a contemptible minority [to] prevent the good of the majority."[23] But the same superiority of wealth, organization, and control of political office and ownership of the press that allowed the rich to monopolize the Philadelphia Convention enabled them to orchestrate a successful ratification campaign. The Federalists also used bribes, intimidation, and fraud against their opponents.

What is more, the Constitution never was submitted to a popular vote. Ratification was by state conventions, each composed of delegates drawn mostly from the same affluent stratum as the framers. Those who voted for these delegates themselves usually had to qualify as property holders. Probably not more than 20 percent of the adult White males voted for delegates to the ratifying conventions.[24]

DEMOCRATIC CONCESSIONS

For all its undemocratic aspects, the Constitution was not without its historically progressive features. Consider the following:[25]

- The very existence of a written constitution with specifically limited powers represented an advance over more autocratic forms of government.
- No property qualifications were required for any federal officeholder, unlike in England and most of the states. And salaries were provided for all officials, thus rejecting the common practice of treating public office as a voluntary service that only the rich could afford.

- The president and legislators were elected for fixed terms. No one could claim a life tenure on any elective office.
- Article VI reads, "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States," a feature that represented a distinct advance over a number of state constitutions that banned Catholics, Jews, and nonbelievers from holding office.
- Bills of attainder, the practice of declaring by legislative fiat a specific person or group of people guilty of an offense, without benefit of a trial, were made unconstitutional. Also outlawed were ex post facto laws, the practice of declaring some act to be a crime and then punishing those who had committed it *before* it was made unlawful.
- There was strong popular sentiment for a Bill of Rights. In order to ensure ratification, supporters of the new Constitution pledged the swift adoption of such a bill as a condition for ratification. So, in the first session of Congress, the first ten amendments were swiftly passed and then adopted by the states. These rights included freedom of speech and religion; freedom to assemble peaceably and to petition for redress of grievances; the right to keep arms; freedom from unreasonable searches and seizures; freedom from self-incrimination, double jeopardy, cruel and unusual punishment, and excessive bail and fines; the right to a fair and impartial trial; and other forms of due process.
- The Bill of Rights, specifically the Ninth Amendment, explicitly acknowledges that the people have a reserve of rights that go beyond the Constitution. Hence the enumeration of specific rights "shall not be construed to deny or disparage others retained by the people."
- The Bill of Rights also prohibited Congress from giving state support to any religion or designating any religion as the official one. Religion was to be something apart from government, supported only by its own believers and not by the taxpayer—a stricture that often has been violated in practice.

Contrary to the notion propagated today by many religionists, the founders did not establish this nation upon religious principles. Thomas Jefferson advised that we "question with boldness even the existence of a god." John Adams wrote, "This would be the best of possible worlds if there was no religion in it." James Madison concluded that during almost fifteen centuries the fruits of Christianity have been "superstition, bigotry and persecution" in both clergy and laity. Benjamin Franklin openly questioned the divinity of Jesus. If the delegates in Philadelphia were intent upon inaugurating a Christian republic, why does the Constitution contain not a single reference to God, Jesus, or Christianity? As one Christian theologian conceded, "The men who … put together the Constitution were not Christians by any stretch of the imagination."[26]

The Constitution consolidated the victory of republicanism over British imperialism. It guaranteed a republican form of government and explicitly repudiated monarchy and aristocracy; hence, Article I, Section 9 states: "No title of Nobility shall be granted by the United States."

According to James McHenry, a delegate from Maryland, at least twenty-one of the fifty-five delegates favored some form of monarchy. Yet few dared venture in that direction out of fear of popular opposition. Furthermore, delegates like Madison believed that stability for their class order was best assured by a republican form of government. The time had come for the rich bourgeoisie to rule directly without the troublesome intrusions of parasitic nobles and kings.

On a number of occasions during the Philadelphia Convention, this assemblage of men who feared and loathed democracy found it necessary to show some regard for popular sentiment (as with the direct election of the lower house). If the Constitution was going to be accepted by the states and if the new government was to have any stability, it had to gain some measure of popular acceptance.

While the delegates and their class dominated the events of 1787–1789, they were far from omnipotent. The class system they sought to preserve was itself the cause of marked restiveness among the people. Land seizures by the poor, food riots, and other violent disturbances occurred throughout the eighteenth century in just about every state and erstwhile colony. This popular ferment spurred the framers in their effort to erect a strong central government, but it also set a limit on what they could do.

The delegates "gave" nothing to popular interests, rather—as with the Bill of Rights—they reluctantly made democratic concessions under the threat of popular rebellion. They kept what they could and grudgingly relinquished what they felt they had to, driven not by a love of democracy but by a fear of it, not by a love of the people but by a prudent desire to avoid riot and insurgency. The Constitution, then, was a product not only of class privilege but of class struggle—a struggle that continued as the corporate economy and the government grew.